

1 PERRY LAW  
2 E. Danya Perry (admitted *pro hac vice*)  
3 *dperry@danyaperrylaw.com*  
4 Karen Agnifilo (admitted *pro hac vice*)  
5 *kagnifilo@danyaperrylaw.com*  
6 Joshua Stanton (admitted *pro hac vice*)  
7 *jstanton@danyaperrylaw.com*  
8 445 Park Ave, 7th Floor  
9 New York, New York 10022  
10 Telephone: (212) 213-3070  
11 Facsimile: (646) 849-9609

9 [Additional attorneys are listed on next  
10 page]

11 *Attorneys for Defendants*  
12 *James Dolan and JD & The Straight  
Shot, LLC*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

KELLYE CROFT.

**Plaintiff,**

VS.

20 JAMES DOLAN, HARVEY  
21 WEINSTEIN, JD & THE  
22 STRAIGHT SHOT, LLC, THE  
23 AZOFF COMPANY HOLDINGS  
24 LLC f/k/a AZOFF MUSIC  
25 MANAGEMENT, LLC, THE  
AZOFF COMPANY LLC f/k/a  
AZOFF MSG ENTERTAINMENT,  
LLC, and DOE CORPORATIONS 1-  
10,

## Defendants.

Case No. 2:24-cv-00371-PA (AGR)

**NOTICE OF MOTION AND MOTION  
OF DEFENDANTS JAMES DOLAN  
AND JD & THE STRAIGHT SHOT,  
LLC TO DISMISS PURSUANT TO  
FEDERAL RULE OF CIVIL  
PROCEDURE 12(b)(6);  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

*Filed concurrently with [Proposed] Order*

Date: June 3, 2024

Time: 1:30 p.m.

Judge: Hon. Percy Anderson

1 KENDALL BRILL & KELLY LLP  
2 Robert E. Dugdale (167258)  
rdugdale@kbkfirm.com  
3 Michael J. McCarthy (334829)  
mmccarthy@kbkfirm.com  
4 10100 Santa Monica Blvd., Suite 1725  
5 Los Angeles, California 90067  
Telephone: (310) 556-2700  
6 Facsimile: (310) 556-2705  
7

8 ROSENBERG, GIGER & PERALA, P.C.  
9 John J. Rosenberg (admitted *pro hac vice*)  
jrosenberg@rglawpc.com  
10 152 West 57th Street, 18th Floor  
11 New York, New York 10019  
Telephone: (646) 494-5000  
12 Facsimile: (646) 595-0590  
13  
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## NOTICE OF MOTION

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3       **PLEASE TAKE NOTICE** that on June 3, 2024, at 1:30 p.m., or as soon  
4 thereafter as the matter may be heard, in Courtroom 9A of this Court, located at 350  
5 West 1st Street, Los Angeles, California 90012, Defendants James Dolan and JD &  
6 the Straight Shot, LLC (collectively, the “Dolan Defendants”) will and hereby do  
7 move this Court for an order dismissing the First, Second, and Fourth Causes of  
8 Action of Plaintiff Kellye Croft’s First Amended Complaint. Doc. No. 48.

9 The Dolan Defendants move on the grounds that, pursuant to Federal Rule of  
10 Civil Procedure 12(b)(6), as to the First, Second and Fourth Causes of Action, Croft  
11 fails to state any claim against them upon which relief can be granted. The Dolan  
12 Defendants further move for dismissal pursuant to Federal Rule of Civil Procedure  
13 12(b)(6) on the ground that the Fourth Cause of Action is barred by a release and  
14 injunction entered by the United States Bankruptcy Court for the District of Delaware.  
15 This Motion is based on this Notice of Motion and Motion, the attached Memorandum  
16 of Points and Authorities in support of the Motion filed concurrently herewith, the  
17 record in this action, and any evidence and argument that may be presented at or  
18 before the hearing on this Motion.

19 This Motion is made following the conference of counsel required pursuant to  
20 Local Rule 7-3, which took place on March 18, 2024, and April 19, 2024.

1 DATED: April 24, 2024

Respectfully submitted,

2 PERRY LAW

3

4 By: /s/ E. Danya Perry

5 E. Danya Perry

6 Karen Agnifilo

7 Joshua Stanton

8 Attorneys for Defendants James Dolan and JD  
& The Straight Shot, LLC

9

10 By: /s/ John J. Rosenberg

11 John J. Rosenberg

12 ROSENBERG, GIGER & PERALA, P.C.

13 Attorneys for Defendants James Dolan and JD  
& The Straight Shot, LLC

14 By: /s/ Robert E. Dugdale

15 Robert E. Dugdale

16 Michael J. McCarthy

17 KENDALL BRILL & KELLY

18 Attorneys for Defendants James Dolan and JD  
& The Straight Shot, LLC

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# MEMORANDUM OF POINTS AND AUTHORITIES

## I. PRELIMINARY STATEMENT

3 On March 25, 2024, Defendants James Dolan and JD & The Straight Shot, LLC  
4 (the “Dolan Defendants”) filed their first Motion to Dismiss (“MTD”), Doc. No. 47,  
5 clearly articulating the myriad ways every claim brought against them in the  
6 Complaint failed to state a claim (having already given counsel an exact play-by-play  
7 of the MTD in an earlier meet and confer). Now, in an exercise in futility and  
8 inefficiency, Plaintiff has filed her First Amended Complaint (“FAC”), Doc. No. 48,  
9 which not only fails to correct the deficiencies in Plaintiff’s initial pleading, but in  
10 many ways compounds them. Plaintiff again relies on a baseless theory of liability-  
11 by-association by including a barely amended, and still fatally deficient, aiding and  
12 abetting cause of action in order to paint the entire FAC with the broad—and entirely  
13 gratuitous—brush of Harvey Weinstein. Due to these deficiencies, along with the  
14 continued absence of viable allegations to support the three speculative, deficient, and  
15 entirely fantastical causes of action against the Dolan Defendants, the FAC must be  
16 dismissed under Fed. R. Civ. P. 12(b)(6).

17       First, Plaintiff’s First Cause of Action under the Trafficking Victims Protection  
18 Act (“TVPA” or “the Act”) fails in every respect under either theory of liability  
19 created by the Act. As to the first possible theory under the TVPA, perpetrator  
20 liability, Plaintiff fails to sufficiently allege any of the requisite elements of such a  
21 claim, including by failing to allege that the Dolan Defendants (1) committed any of  
22 the enumerated acts for which one can be punished under the Act (e.g., transporting  
23 or harboring Plaintiff), with knowledge that Plaintiff would be subjected to force,  
24 fraud, or coercion to cause her to engage in a commercial sex act; or (2) exchanged  
25 anything of value for sex, as required to allege a “commercial sex act” under the Act—  
26 a statute that targets and criminalizes sex *trafficking*, not sexual relations (which is all  
27 that is alleged in the FAC). Plaintiff’s suggestion that the Dolan Defendants are also

1 liable for violating the TVPA under a beneficiary theory of liability is, if possible,  
 2 even more deficient. Plaintiff has failed to allege any legally cognizable benefit the  
 3 Dolan Defendants received for allegedly “trafficking” her, and she fails to plausibly  
 4 allege the Dolan Defendants knew she would be trafficked (or that she was, in fact,  
 5 trafficked). Consequently, her TVPA claim must be dismissed.

6 *Second*, Plaintiff’s Second Cause of Action alleged against Mr. Dolan for  
 7 sexual battery also fails to state a claim and must be dismissed. Indeed, Plaintiff fails  
 8 to allege the most fundamental elements of a claim for sexual battery—that Mr. Dolan  
 9 intended to touch Plaintiff in any harmful, offensive, and non-consensual manner—  
 10 at any time when Plaintiff and Mr. Dolan were in California. Moreover, Plaintiff’s  
 11 sexual battery claim is time-barred.

12 *Finally*, Plaintiff unabashedly continues to pursue the Fourth Cause of Action  
 13 against Mr. Dolan for aiding and abetting an alleged assault perpetrated by Harvey  
 14 Weinstein (“Weinstein”), a claim that remains entirely meritless, even accepting the  
 15 allegations in the FAC as true. In order to state this claim, Plaintiff must allege that  
 16 Mr. Dolan knew that Weinstein planned to assault Plaintiff *and* that Mr. Dolan  
 17 substantially assisted or encouraged Weinstein to carry out the assault; yet she alleges  
 18 no facts plausibly supporting either of these elements in the FAC (nor could she).

19 Dismissal is also mandated because this claim was released in a separate federal  
 20 action. As fully briefed in the Dolan Defendants’ first MTD, Doc. No. 47 at 19–22,  
 21 the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy  
 22 Court”), as a component of the global resolution of the 2018 bankruptcy proceedings  
 23 involving The Weinstein Company (“TWC”), entered an Order approving a  
 24 comprehensive Plan of Liquidation that released all of the former directors of TWC—  
 25 expressly including Mr. Dolan—from any claims, whether asserted or unasserted, that  
 26 relate “directly or indirectly” to alleged sexual misconduct by Weinstein.  
 27 Concomitant to that release, which alone bars Plaintiff’s aiding and abetting claim,  
 28

1 the Bankruptcy Court entered a “Channeling Injunction,” which, by its terms,  
 2 **permanently enjoined** claims against Mr. Dolan (as a “Released Party”) of the very  
 3 sort that Plaintiff asserts Mr. Dolan “aided and abetted” in this action. It was  
 4 undisputed at the time of the filing of the initial Complaint that Plaintiff’s counsel was  
 5 aware of the injunction, as her counsel had objected to—and pursued an unsuccessful  
 6 appeal of—the terms of the Channeling Injunction in the TWC bankruptcy. This  
 7 aiding and abetting claim, both released by and brought in violation of a federal court  
 8 order, should not be countenanced by this Court.

9 For these reasons, and those discussed more fully below, the Court should  
 10 dismiss all three claims asserted against the Dolan Defendants in the FAC.

11 **II. LEGAL STANDARD**

12 To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), a complaint must  
 13 “contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is  
 14 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*  
 15 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible “when  
 16 the plaintiff pleads factual content that allows the court to draw the reasonable  
 17 inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*,  
 18 550 U.S. at 556).

19 “[A] plaintiff’s obligation to provide the grounds of [her] entitlement to relief  
 20 requires more than labels and conclusions, and a formulaic recitation of the elements  
 21 of a cause of action will not do.” *Twombly*, 550 U.S. at 555 (quotation omitted).  
 22 Consequently, while factual allegations are entitled to a presumption of truth, “a court  
 23 considering a motion to dismiss can choose to begin by identifying pleadings that,  
 24 because they are no more than conclusions, are not entitled to the assumption of  
 25 truth.” *Iqbal*, 556 U.S. at 679.

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1     **III. ARGUMENT**

2         **A. The FAC Fails to State a Claim Under 18 U.S.C. §§ 1591 and**  

3             **1595**

4         Plaintiff's claim that the Dolan Defendants violated 18 U.S.C. §§ 1591 and  

5         1595 (the "Trafficking Victims Protection Act" or "TVPA") should be dismissed  

6         under Rule 12(b)(6). Not only is Plaintiff's claim under the TVPA legally deficient,  

7         but her cynical attempt to exploit the TVPA for a financial windfall makes a mockery  

8         of the Act. The legislative history makes clear that the purpose of the TVPA is "to  

9         combat trafficking in persons, a contemporary manifestation of slavery." H.R. REP.  

10         106-487, 1. Even a cursory review of the horrific criminal and civil cases brought  

11         under the Act makes this more than apparent. *E.g.*, *United States v. Todd*, 627 F.3d  

12         329, 330–31 (9th Cir. 2010) ("The statute focuses on those ... who make money out  

13         of selling the sexual services of human beings ... they control and treat as their profit-  

14         producing property"). No such conduct is alleged in the FAC, which, put simply,  

15         alleges that a licensed massage therapist voluntarily traveled to California to provide  

16         legitimate massage therapy services during one of several legs of a domestic tour by  

17         a world-famous rock band. (*See generally* FAC ¶¶ 47–51.) For the reasons stated  

18         below, that does not begin to state a claim for "a contemporary manifestation of  

19         slavery" under the TVPA.

20         Section 1595 provides a civil remedy to victims of sex trafficking as defined  

21         by Section 1591. The remedy is available against both perpetrators and beneficiaries  

22         of Section 1591 violations. 18 U.S.C. § 1595(a). As to perpetrators, the TVPA is  

23         violated when a person: "knowingly ... recruits, entices, harbors, transports, provides,  

24         obtains, advertises, maintains, patronizes, or solicits by any means a person," 18  

25         U.S.C. § 1591(a)(1), and knows "that means of force, threats of force, fraud, coercion  

26         ..., or any combination of such means will be used to cause the person to engage in a  

27         commercial sex act." 18 U.S.C. § 1591(a)(2). A beneficiary is also civilly liable

1 under the statute to the extent such a person “knowingly benefits, or attempts or  
 2 conspires to benefit, financially or by receiving anything of value from participation  
 3 in a venture which that person knew or should have known has engaged in” sex  
 4 trafficking as defined by Section 1591. 18 U.S.C. § 1595(a).

5 As explained in detail below, the FAC fails to allege any of the necessary  
 6 elements of either theory of liability. Instead, Plaintiff’s factual allegations of  
 7 Mr. Dolan’s conduct in California simply describe a purported sexual relationship  
 8 with disparities based on age and finances. The TVPA neither criminalizes such a  
 9 relationship, nor creates a civil remedy for a participant in such a relationship.

10 **1. The FAC Fails to Make Out a Perpetrator Claim**

11 The FAC fails to allege two necessary elements of a perpetrator claim against  
 12 the Dolan Defendants under the TVPA, and each such failure is independently fatal  
 13 to Plaintiff’s claim. *First*, the FAC fails to allege an enumerated act by the Dolan  
 14 Defendants that is prohibited under the TVPA, committed with the knowledge that  
 15 force, fraud, or coercion would be used to perpetrate a commercial sex act. *Second*,  
 16 relatedly, the FAC fails to allege that the Dolan Defendants intended a commercial  
 17 sex act to occur (or that any such act did occur).

18 **a. The FAC Does Not Allege That the Dolan Defendants  
 19 Knowingly Engaged in Any Conduct Prohibited  
 20 Under the TVPA**

21 As unsavory as allegations of sexual assault may be—and ignoring  
 22 momentarily that no such actionable conduct by Mr. Dolan is even sufficiently  
 23 pleaded in this case<sup>1</sup>—they do not on their own make out the elements of a claim  
 24 under the TVPA. *See Doe v. Fitzgerald*, 2022 WL 425016, at \*8 (C.D. Cal. Jan. 6,  
 25 2022) (noting that although “date rape is reprehensible, … not all date rapes are meant

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26  
 27 <sup>1</sup> See Section III.B, *infra*.  
 28

1 to be punishable by a sex trafficking statute”). To state a claim against a perpetrator  
 2 under the TVPA, a plaintiff must allege that the alleged perpetrator possesses culpable  
 3 knowledge at the time he commits one of the acts enumerated in Section 1591(a).  
 4 “The knowledge required of the defendant is such that if things go as he has planned,  
 5 force, fraud or coercion will be employed to cause his victim to engage in a  
 6 commercial sex transaction.” *Todd*, 627 F.3d at 334. The statute requires that the  
 7 “defendant know in the sense of being aware of an established modus operandi that  
 8 will in the future cause a person” to engage in a commercial sex act caused by fraud,  
 9 force, or coercion. *Id.*

10 The FAC does not contain any factual allegation that the Dolan Defendants had  
 11 such knowledge. Instead, the only ostensibly knowledge-related allegations are  
 12 conclusory and lack *any* factual content. (E.g., FAC ¶ 59 (alleging that “Ms. Croft  
 13 was flown out to Los Angeles for the purposes of engaging in unwanted sexual acts  
 14 with Dolan”).)

15 Exacerbating these pleading deficiencies, it is impossible to discern what  
 16 possible force, fraud, or coercion Plaintiff could be alleging with respect to any  
 17 contemplated sexual interaction with Mr. Dolan in California. Plaintiff does not  
 18 allege that the Dolan Defendants had any awareness that any such prohibited means  
 19 would be utilized (or that they were in fact utilized). Compare, for example, the  
 20 complaint in *Huett v. Weinstein Co. LLC*, which alleged that the defendant repeatedly  
 21 engaged in a pattern of misconduct with women over the course of decades. 2018  
 22 WL 6314159 (C.D. Cal. Nov. 5, 2018). There, the court found that allegation  
 23 sufficient to state a claim under the TVPA because the defendant knew that he was  
 24 likely to act in accordance with his own pattern. *Id.* at \*2–3; see *Todd*, 627 F.3d at  
 25 334 (conviction sustained where defendant’s “knowledge of his own modus operandi  
 26 in securing an income from prostitution by a pattern of coercion was sufficient to  
 27 support the jury’s verdict”).

28

1        The FAC does not allege any remotely similar pattern of conduct as to  
 2 Mr. Dolan (nor could it). Nor does it make any plausible allegation that the Dolan  
 3 Defendants knew that some prohibited means would be used to compel Plaintiff to  
 4 engage in a commercial sex act. *See Fitzgerald*, 2022 WL 425016, at \*8 (partially  
 5 granting motion to dismiss because the plaintiff had not alleged that the defendant  
 6 “invited her … with knowledge that he or someone else would” commit any of the  
 7 acts prohibited by the TVPA). Indeed, Plaintiff’s allegations that Mr. Dolan acted  
 8 “romantically” towards her and “led her to believe, at the time, that [he] actually cared  
 9 about her” (FAC ¶ 63) suggest that he did not, and never intended to, use force, fraud,  
 10 or coercion to engage in any sexual contact with her.

11                    **b. The FAC Does Not Allege a Commercial Sex Act**

12        Equally fatal to Plaintiff’s TVPA claim is Plaintiff’s failure to allege that  
 13 Mr. Dolan intended a commercial sex act to occur (or that any such act did occur),  
 14 even ignoring her insufficient allegations of force, fraud, or coercion. The term  
 15 “commercial sex act” is defined by 18 U.S.C. § 1591(e)(3) as “any sex act, on account  
 16 of which anything of value is given to or received by any person.” The only references  
 17 in the FAC to anything resembling a commercial sex act in California appear in two  
 18 conclusory sentences of the FAC. (*See* FAC ¶¶ 113 (accusing Mr. Dolan in  
 19 conclusory fashion of “engaging in unwanted commercial sex acts”), 119 (stating in  
 20 a conclusory fashion that Mr. Dolan “intentionally engaged in trafficking Plaintiff for  
 21 commercial sex acts”)). The FAC does not allege that Mr. Dolan paid Plaintiff to  
 22 have sex with him. Nor does it allege any intangible benefit that was given to her in  
 23 exchange for sex. To apply the TVPA based on these allegations would expand the  
 24 scope of the statute to “yield absurd results.” *Fitzgerald*, 2022 WL 425016, at \*7  
 25 (citing *Ma v. Ashcroft*, 361 F.3d 553, 558 (9th Cir. 2004) (“[S]tatutory interpretations  
 26 which would produce absurd results are to be avoided”)). Essentially, all sexual  
 27 relationships in which there is an allegation of financial disparity between the  
 28

1 participants would be transformed into “commercial sex acts.” Such an absurd and  
 2 unprecedented result should not be endorsed by this Court.

3 The additional allegation in the FAC that Plaintiff was concerned that  
 4 “upsetting” Mr. Dolan would “would jeopardize her work with the Eagles and future  
 5 opportunities” (FAC ¶ 62), does nothing to alter this conclusion. Endorsing this view  
 6 of the TVPA would convert a broad swath of *quid pro quo* workplace sexual  
 7 harassment claims into “sex trafficking,” a serious felony offense. There is no  
 8 indication Congress intended such a broad construction of the TVPA—a statute  
 9 targeting a “contemporary manifestation of slavery,” H.R. REP. 106-487, 1, not  
 10 misconduct in the workplace. This Court should reject expanding the TVPA in such  
 11 an unprecedented manner.

12 **2. The FAC Fails to State a Beneficiary Claim Under the TVPA  
 13 as to the Dolan Defendants**

14 Plaintiff also fails to allege the necessary elements of a beneficiary claim under  
 15 the TVPA. To state a beneficiary claim under the statute, “a plaintiff must allege facts  
 16 plausibly establishing that the defendant(s) ‘(1) knowingly benefitted (2) from  
 17 participation in a venture (3) that they knew or should have known has engaged in  
 18 trafficking the plaintiff.’” *B.J. v. G6 Hosp., LLC*, 2023 WL 3569979, at \*3 (N.D. Cal.  
 19 May 19, 2023) (quoting *J.M. v. Choice Hotels Int'l, Inc.*, 2022 WL 10626493, at \*2  
 20 (E.D. Cal. Oct. 18, 2022)). Plaintiff fails to properly allege any of these elements.

21 **a. The FAC Fails to Allege that the Dolan Defendants  
 22 Received Any Actionable Benefit**

23 Although Plaintiff alleges—albeit again in a conclusory manner—that the  
 24 Dolan Defendants “benefitted” from an alleged sex-trafficking venture (FAC ¶¶ 114–  
 25 115), she never alleges any facts that suggest, except in the most generalized and  
 26 legally insufficient terms, the nature of that “benefit.” At most, Plaintiff avers that  
 27 Mr. Dolan received sexual gratification as a result of his alleged relationship with  
 28

1 Plaintiff. (FAC ¶ 11 (alleging that Mr. Dolan “trafficked her for his own sexual  
2 gratification”)). As a matter of law, that is not a “benefit” recognized under the  
3 TVPA. *Fitzgerald*, 2022 WL 425016, at \*9 (granting motion to dismiss beneficiary  
4 claim under the TVPA where the only benefit alleged was sexual gratification).

5 As to Defendant JD & the Straight Shot, LLC, Plaintiff only implausibly and  
6 vaguely avers that the corporation “financially and otherwise benefited ... by keeping  
7 Dolan satisfied.” (FAC ¶ 115.) Here, *Geiss v. Weinstein Co. Holdings LLC* is  
8 instructive. 383 F. Supp. 3d 156 (S.D.N.Y. 2019). In that case, Weinstein’s company  
9 was alleged to have financially benefited from Weinstein’s employment. *See id.* at  
10 169. The court held that allegation was insufficient, despite the company’s alleged  
11 participation in a sex trafficking venture with Weinstein. *Id.* at 169–70. Critically,  
12 the court found that the plaintiffs had not sufficiently alleged any benefit that TWC  
13 received “*because of*” Weinstein’s misconduct, as required under the TVPA. *Id.* at  
14 169. The FAC similarly fails to allege any benefit JD & the Straight Shot, LLC  
15 received “*because of*” any purported misconduct by Mr. Dolan.

**b. The FAC Fails to Allege the Dolan Defendants Participated in a Sex Trafficking Venture**

18        The conclusory allegations concerning participation in a venture are also  
19 legally insufficient. Plaintiff has failed to plausibly allege knowing or reckless  
20 “participation in the sex trafficking act itself,” as required by the statute. *Noble v.*  
21 *Weinstein*, 335 F. Supp. 3d 504, 524 (S.D.N.Y. 2018). To the extent it is Plaintiff’s  
22 position that the Dolan Defendants were in a venture with themselves because, as she  
23 alleges, “JD & The Straight Shot, LLC is substantially or entirely owned, directly or  
24 indirectly, by Dolan” (FAC ¶ 15), that would be nonsensical. In essence, that would  
25 suggest that Mr. Dolan was in a venture with himself, while a “venture” under the  
26 statute clearly contemplates more than one participant. The FAC also entirely fails to  
27 establish a venture with the Azoff Entities. *See* Memorandum of Points and

1 Authorities in Support of Defendants Azoff Entities' Motion to Dismiss Pursuant to  
2 Federal Rule of Civil Procedure 12(b)(6), Doc No. 51 at 9–11.

**c. The FAC Fails to Allege that the Dolan Defendants Knew or Should Have Known that Any Venture Trafficked the Plaintiff**

6 This element fails for the same reason Plaintiff’s perpetrator theory of liability  
7 fails—namely because, as discussed in Section III.A.1 above, Plaintiff does not  
8 plausibly allege sex trafficking in the FAC. A person cannot have knowledge of an  
9 act that did not occur. And even if Plaintiff did plausibly allege sex trafficking  
10 generally (which she does not), she would still be required to allege that the Dolan  
11 Defendants knew (or recklessly disregarded) that “means of force, fraud or coercion  
12 would be used to cause [her] to engage in a commercial sex act.” *Noble*, 335 F. Supp.  
13 3d at 524. Yet Plaintiff does not allege that the Dolan Defendants knew that force,  
14 fraud, or coercion would be used at all (and indeed none is alleged to have been used  
15 by the Dolan Defendants), nor that any commercial sex act was intended (or, again,  
16 that any such act occurred).

## B. The FAC Fails to State a Claim for Sexual Battery

18 Plaintiff's Second Cause of Action should also be dismissed because it fails to  
19 plausibly allege the requisite elements to state a claim for sexual battery under  
20 California law and, even if properly pleaded, such a claim would be time-barred by  
21 California's two-year statute of limitations.

## 1. The FAC Fails to Plausibly Allege the Elements of a Sexual Battery Claim

24 The FAC's Second Cause of Action must be dismissed because it fails to  
25 properly allege an essential element of a sexual battery claim required by California  
26 law: that Mr. Dolan acted with the requisite intent (*i.e.*, "the intent to cause a harmful  
27 or offensive contact"). Cal. Civ. Code § 1708.5(a)(1); *Angie M. v. Superior Ct.*, 37

1 Cal. App. 4th 1217, 1225 (1995). Indeed, other than the conclusory parroting that  
 2 “[a]t all relevant times, Dolan acted … with the knowledge of or with reckless  
 3 disregard for the fact that his conduct was certain to cause injury and/or humiliation  
 4 to Plaintiff, and intended to cause fear, physical injury, and/or pain and suffering to  
 5 Plaintiff” (FAC ¶ 121), the FAC makes no allegations regarding Mr. Dolan’s intent  
 6 with respect to any of his alleged interactions with Plaintiff in California.

7 Plaintiff’s newly-minted but still conclusory claim that her consent to  
 8 Mr. Dolan’s purported “sexual demands” was “neither free nor voluntary” and her  
 9 scarce supporting allegations, essentially “that Defendant engaged in sex acts with  
 10 [Plaintiff] against her will,” are insufficient to plead the requisite intent to state a  
 11 sexual battery claim. *Fitzgerald*, 2022 WL 425016, at \*10 (dismissing sexual battery  
 12 claim that “fail[ed] to allege any other facts [beyond the conclusory allegation that  
 13 Defendant engaged in non-consensual sex acts with Plaintiff] that raise[d] a plausible  
 14 inference as to Defendant’s intent”). Rather, to allege the requisite intent, Plaintiff  
 15 must allege facts that would raise a plausible inference that Mr. Dolan (a) knew that  
 16 Plaintiff’s apparent consent was—despite its appearance—actually not real,  
 17 meaningful consent, and (b) that he nonetheless touched her with the intent of causing  
 18 harmful or offensive contact. *See Russo v. APL Marine Servs., Ltd.*, 2014 WL  
 19 3506009, at \*5–6 (C.D. Cal. July 14, 2014) (dismissing battery where complaint failed  
 20 to allege sexual touching continued after plaintiff indicated lack of consent).  
 21 Plaintiff’s failure to allege intent-related facts alone requires the dismissal of her  
 22 Second Cause of Action.

23 It must also be noted that Plaintiff’s allegations concerning another element of  
 24 sexual battery—namely, actual physical contact, *Angie M.*, 37 Cal. App. 4th at 1225—  
 25 have been stated so ambiguously as to be utterly implausible. (See FAC ¶ 62.) What  
 26 the FAC does allege is that on some unspecified date(s), in some unspecified  
 27 location(s), Plaintiff acceded to some unspecified demand(s) made by Mr. Dolan.  
 28

1 Plaintiff alleges that one such demand was that he be allowed to touch her “breasts,  
 2 buttocks and vagina” (FAC ¶ 62), but she carefully does *not* allege that Mr. Dolan  
 3 ever acted on that particular demand, in California, within the relevant statute of  
 4 limitations period. This apparent ambiguity in her pleading is particularly striking  
 5 given the salacious details she includes in other parts of the FAC (*e.g.*, ¶¶ 92–93  
 6 (providing a lurid description of Weinstein’s alleged assault)). It seems clear that the  
 7 ambiguity in her amended allegations as it concerns any possible sexual battery by  
 8 Mr. Dolan was intentional; if there were any “there there,” Plaintiff would have  
 9 alleged it.

10        Nevertheless, although her allegations as to touching are at best ambiguous,  
 11 what is not ambiguous is her failure to allege that Mr. Dolan intentionally engaged in  
 12 any non-consensual sexual conduct with her. That requires dismissal of her sexual  
 13 battery claim. *Russo*, 2014 WL 3506009, at \*5–6.

14            **2. Plaintiff’s Sexual Battery Claim is Time-Barred**

15 Plaintiff’s sexual battery claim arises from events that allegedly occurred in  
 16 January 2014 and therefore is time-barred by California’s two-year statute of  
 17 limitations governing battery claims.<sup>2</sup> Cal. Civ. Proc. Code § 335.1. Although  
 18 California has a revival statute extending the statute of limitations to ten years for  
 19 “civil actions for recovery of damages suffered as a result of sexual assault”—defined  
 20 as the commission of any of the crimes in certain enumerated sections of the  
 21 California Penal Code—that extension is inapplicable to Plaintiff’s claim. *See* Cal.  
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23            <sup>2</sup> To the extent that Plaintiff alleges that some of the events described in the  
 24 FAC occurred in Florida in late 2013, (*e.g.*, FAC ¶¶ 37, 40–45), Florida’s statutes of  
 25 limitations would apply to any claims based on torts that allegedly occurred in that  
 26 state, *see Hillard v. TABC, Inc.*, 2017 WL 6940540, at \*3 (C.D. Cal. Dec. 18, 2017),  
 27 and those claims therefore would also be time-barred. Fla. Stat. Ann. § 95.11(3)(n);  
*Treminio v. Crowley Mar. Corp.*, 649 F. Supp. 3d 1223, 1234 (M.D. Fla. 2023).

1 Civ. Proc. Code § 340.16(b)(1) (the “Revival Statute”). The only section of the Penal  
 2 Code that could even conceivably permit the application of the Revival Statute to  
 3 Plaintiff’s allegations is California Penal Code § 243.4(e)(1) (misdemeanor sexual  
 4 battery). However, while Plaintiff cites that statute (FAC ¶ 119), she fails to allege  
 5 that Mr. Dolan committed necessary elements that would give rise to this  
 6 misdemeanor criminal offense. *Gonzalez-Cervantes v. Holder*, 709 F.3d 1265, 1267  
 7 (9th Cir. 2013) (misdemeanor sexual battery requires: “(1) the touching of an intimate  
 8 part of another person, directly or through the clothing of the perpetrator or the victim;  
 9 (2) against the person’s will; and (3) with specific intent to cause sexual arousal,  
 10 sexual gratification, or sexual abuse.” (citing Cal. Penal Code § 243.4(e))).<sup>3</sup>

11 Because Plaintiff’s claim does not seek relief for alleged conduct that would  
 12 constitute a misdemeanor sexual battery, the Revival Statute does not apply.  
 13 Specifically, Plaintiff fails to adequately allege that Mr. Dolan had any intent to make  
 14 non-consensual contact and is intentionally ambiguous as to whether such contact was  
 15 made. Additionally, Plaintiff fails to allege that Mr. Dolan acted with the specific  
 16 intent required to commit a misdemeanor sexual battery (Cal. Penal Code § 243.4).<sup>4</sup>  
 17 *People v. Chavez*, 84 Cal. App. 4th 25, 29 (2000) (“Sexual battery is a specific intent  
 18 crime”). Since the FAC is completely devoid of any non-conclusory allegations that  
 19 Mr. Dolan acted with specific intent to commit a criminal sexual assault while in  
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22       <sup>3</sup> Stating a claim that amounts to a felony sexual battery requires pleading  
 23 additional elements wholly absent from the FAC, e.g., that the alleged sexual assault  
 24 victim was unlawfully restrained at the time of the assault. *See generally* Cal. Penal  
 25 Code § 243.4(a)–(d).

26       <sup>4</sup> As discussed in Section III.B.1, *supra*., Plaintiff also fails to allege the distinct  
 27 intent required to commit a civil sexual battery. Alleging specific intent may not be  
 28 required to state a claim for *civil* sexual battery. *See* Cal. Civ. Code § 1708.5.

1 California, it fails to allege an offense triggering the Revival Statute.<sup>5</sup>

2           **C. The FAC Fails to State a Claim Against Mr. Dolan for Aiding  
3 and Abetting Weinstein**

4           The Court should also dismiss Plaintiff's claim that Mr. Dolan aided and  
5 abetted Weinstein's alleged assault. Under California law, liability for such a claim  
6 "depends on proof the defendant had *actual knowledge* of the specific primary wrong  
7 and that the defendant *substantially assisted*" in carrying out that wrong with such  
8 knowledge. *Su v. Henry Glob. Consulting Grp.*, 2022 WL 19392, at \*2 (C.D. Cal.  
9 Jan. 3, 2022) (cleaned up) (emphasis added) (quoting *Casey v. U.S. Bank Nat. Ass'n*,  
10 127 Cal. App. 4th 1138, 1145 (2005)). Here, Plaintiff's Fourth Cause of Action fails  
11 on both fronts. *First*, the FAC sets forth no allegations that Mr. Dolan had any  
12 knowledge that Weinstein intended to assault Plaintiff. *Second*, Plaintiff fails to  
13 allege that Mr. Dolan substantially assisted or encouraged the commission of an  
14 assault against her by Weinstein.

15           While the foregoing pleading deficiencies are dispositive, Plaintiff's aiding and  
16 abetting claim is barred in any event by the Release and Channeling Injunction entered  
17 by the Bankruptcy Court in *In re The Weinstein Company Holdings LLC.*, No. 18-  
18 10601-MFW, D.I. 3203 & 3203-1 (Bankr. D. Del. Jan. 26, 2021) [attached as  
19 "Ex. A"].

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23           <sup>5</sup> The FAC alleges at most a misdemeanor offense, and the legislative history  
24 of the Revival Statute and its amendment makes clear that "claims for sexual assaults  
25 that would be misdemeanors ... are not revived by the bill's proposed amendments to  
26 the Revival Statute." Alison Merrilees, Sexual Assault: Statute of  
27 Limitations, at 12 (Apr. 27, 2022), available at [https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=202120220AB2777](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB2777) (Report to Cal. Assemb.  
28 Comm. on Jud. re AB-2777).

**1. The FAC Does Not Allege that Mr. Dolan Knew Weinstein Was Going to Sexually Assault Plaintiff**

Aiding and abetting requires that a defendant have actual knowledge of the tort planned and committed by the principal tortfeasor. Under California law, “a defendant can only aid and abet another’s tort if the defendant knows what ‘that tort’ is.” *Casey*, 127 Cal. App. 4th at 1146.

The FAC is devoid of any such allegations with respect to Mr. Dolan. Plaintiff does not aver that Mr. Dolan knew that Weinstein was going to assault her, beyond the threadbare statement that Mr. Dolan “acted with the knowledge of or with reckless disregard for the fact that his conduct was certain to cause injury and/or humiliation to Plaintiff, and intended to cause fear, physical injury, and/or pain and suffering to Plaintiff.” (FAC ¶ 131.) Plaintiff’s only suggestion that Mr. Dolan had any communications with Weinstein regarding Plaintiff is her allegation that Weinstein told her “Dolan had mentioned his massage therapist and had said great things about her.” (FAC ¶ 71.) Nor does Plaintiff allege that Mr. Dolan even knew Weinstein was at The Peninsula Hotel on the date in question prior to Plaintiff’s purported report to Mr. Dolan that Weinstein had assaulted her. The deficiencies in Plaintiff’s claim are underscored by the allegation that Mr. Dolan called Plaintiff’s hotel room “in the midst of the assault” and thereby thwarted the very attack that Plaintiff claims he had supposedly arranged through an orchestrated elevator meeting. (FAC ¶¶ 94–95.)

At most, Plaintiff alleges that Mr. Dolan became aware of Weinstein’s alleged assault *after the fact*, when, later that evening, she allegedly informed Mr. Dolan of her encounter with Weinstein. (FAC ¶¶ 97–99.) Such an *ex post* report does not support the inference that Mr. Dolan knew about Weinstein’s general intentions before the fact, “let alone that [he] knew the ‘specific primary wrong’ [he was] assisting.” *Molenda v. Universal City Studios LLC*, 2020 WL 6653505, at \*3 (C.D. Cal. June 8, 2020).

1        The FAC suggests that Mr. Dolan was aware that Weinstein had a proclivity  
 2 for sexual violence. But even if true, this general awareness, which at most amounts  
 3 to a “vague suspicion of wrongdoing[,]” is insufficient to establish actual knowledge  
 4 of a specific planned attack necessary to sustain a claim of aiding and abetting a sexual  
 5 assault. *In re First All. Mortg. Co.*, 471 F.3d 977, 993 n.4 (9th Cir. 2006) (recognizing  
 6 the *Casey* court’s rejection of mere general allegations of knowledge). Here, Plaintiff  
 7 alleges only that Mr. Dolan was not surprised by Weinstein’s alleged “sexually  
 8 aggressive” behavior towards her and that Mr. Dolan described Weinstein as “a  
 9 troubled person” with unspecified “serious issues.” (FAC ¶ 99.) These alleged *ex*  
 10 *post* observations about Weinstein’s vague “issues” are insufficient to confirm  
 11 Mr. Dolan’s knowledge that Weinstein was going to commit a “specific primary  
 12 wrong”—namely, a sexual assault targeting Plaintiff. *See Casey*, 127 Cal. App. 4th  
 13 at 1145–46. In short, because Plaintiff does not allege a single fact to suggest that  
 14 Mr. Dolan knew Weinstein was going to assault Plaintiff, her aiding and abetting  
 15 claim against Mr. Dolan fails as a matter of law.

16                    **2. The FAC Fails to Allege that Mr. Dolan Gave Substantial  
 17 Assistance or Encouragement to Weinstein**

18        Plaintiff also fails to allege facts sufficient to satisfy the requisite element that  
 19 Mr. Dolan substantially assisted or encouraged Weinstein’s actions. *See Casey*, 127  
 20 Cal. App. 4th at 1144. Mere knowledge that a tort is to be committed, and the failure  
 21 to prevent that tort, does not constitute aiding and abetting. *Austin B. v. Escondido*  
 22 *Union Sch. Dist.*, 149 Cal. App. 4th 860, 879 (2007). Instead, a defendant “must have  
 23 acted to aid the primary tortfeasor ‘with knowledge of the object to be attained.’”  
 24 *Casey*, 127 Cal. App. 4th at 1146 (quoting *Lomita Land & Water Co. v. Robinson*,  
 25 154 Cal. 36, 47 (1908)).

26        Plaintiff again fails to allege that Mr. Dolan in any way participated in, assisted,  
 27 or encouraged Weinstein’s alleged assault. At most, Plaintiff implausibly—indeed  
 28

1 absurdly—implies that Mr. Dolan was somehow aware in advance that a chance  
 2 meeting between Plaintiff and Weinstein was going to occur while she waited for a  
 3 hotel elevator, and that Mr. Dolan therefore must be liable for the ensuing assault  
 4 allegedly committed by Weinstein. Plaintiff's unfounded belief that her alleged  
 5 encounter with Weinstein would not have occurred otherwise does not sufficiently  
 6 plead Mr. Dolan's facilitation of the alleged assault.

7 Plaintiff further implies that Mr. Dolan's friendship with Weinstein was a  
 8 substantial factor in aiding Weinstein's alleged assault. In that regard, Plaintiff  
 9 alleges that, after she volunteered to Weinstein that she was delivering food to  
 10 Mr. Dolan, Weinstein introduced himself as Mr. Dolan's good friend and used that  
 11 friendship as a basis to continue the conversation with Plaintiff and invite her to his  
 12 room. (FAC ¶ 71.) Yet, the mere fact that Mr. Dolan knew Weinstein, and that  
 13 Mr. Dolan allegedly mentioned that fact to Plaintiff (FAC ¶ 72), does not establish  
 14 any level of culpable participation by Mr. Dolan in Weinstein's alleged assault of  
 15 Plaintiff. *See, e.g., Howard v. Superior Ct.*, 2 Cal. App. 4th 745, 749 (1992), modified  
 16 (Feb. 10, 1992) (aiding and abetting “necessarily requires a defendant to reach a  
 17 conscious decision to participate in tortious activity for the purpose of assisting  
 18 another in performing a wrongful act”). Instructively, Plaintiff does not allege that  
 19 Mr. Dolan attempted to introduce her to Weinstein or suggested that the two should  
 20 meet. In short, Plaintiff offers no facts to support her conclusory allegation that  
 21 Mr. Dolan aided Weinstein's alleged assault. Therefore, Plaintiff's Fourth Cause of  
 22 Action should be dismissed.

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**3. Plaintiff's Aiding and Abetting Claim was Filed in Contravention of, and is Barred by, a Release and Injunction Entered by the Bankruptcy Court for the District of Delaware**

5 Plaintiff's gratuitous attempt to infect this case with endless references to  
6 Weinstein provides another basis to dismiss her aiding and abetting claim pursuant to  
7 Rule 12(b)(6): That claim has been released and enjoined. *Smith v. Charter*  
8 *Commc'ns, Inc. (St. Louis)*, 467 F. App'x 742, 744 (9th Cir. 2012) (affirming  
9 dismissal of claim released by a separate bankruptcy proceeding). In asserting that  
10 claim, Plaintiff—and perhaps more significantly, her counsel (who were deeply  
11 involved in the proceedings discussed below)—have knowingly violated a release and  
12 order of injunctive relief entered by the Bankruptcy Court that, by its explicit terms,  
13 permanently enjoined claimants from asserting the type of Weinstein-related claim  
14 that Plaintiff has brought in this action. Moreover, Plaintiff repeated the enjoined  
15 claim in her FAC, despite being put on explicit notice of the Bankruptcy Court's order  
16 during counsel's "meet and confer" on March 18, 2024, and again in the Dolan  
17 Defendants' first MTD, filed on March 25, 2024. See Doc. No. 47, at 19–22. Plaintiff  
18 had ample opportunity to remove the barred claim from the FAC, but instead chose  
19 to proceed in an intentional violation of a federal court order.

20 As was highly publicized at the time, following the revelations of Weinstein’s  
21 sexual misconduct, TWC sought protection under the United States Bankruptcy Code  
22 in proceedings before the Bankruptcy Court. Faced with the daunting task of  
23 resolving the hundreds of claims, asserted and unasserted, stemming from  
24 Weinstein’s misconduct—including a myriad of related claims against TWC and its  
25 former directors—on January 26, 2021, the Bankruptcy Court approved and entered  
26 as an Order the Fifth Amended Joint Chapter 11 Plan of Liquidation (the “Plan”),  
27 which had been submitted to the Bankruptcy Court for its consideration as a

1 mechanism for resolving these and other categories of claims in the context of the  
 2 ongoing bankruptcy proceedings. Ex. A, D.I. 3203 & 3203-1. Notice of the Plan was  
 3 widely circulated before its approval by the Bankruptcy Court, including through  
 4 advertisements in the *New York Post*, *The Hollywood Reporter*, and *Variety*. *In re*  
 5 *The Weinstein Company Holdings LLC.*, No. 18-10601-MFW, D.I. 3163-65. A  
 6 central component of the global settlement reflected in the Plan was the release of all  
 7 former TWC directors—including Mr. Dolan, who is specifically identified in the  
 8 Plan as a “Released Party”<sup>6</sup>—from all “Sexual Misconduct Claims,” asserted or  
 9 unasserted, which are defined in the Plan as any claims “that relate directly or  
 10 indirectly to the alleged or actual sexual misconduct of Harvey Weinstein.”  
 11 Concomitant to this negotiated and bargained-for release, the Plan includes a  
 12 “Channeling Injunction,” which (a) “channeled” all Sexual Misconduct Claims  
 13 against the Released Parties (specifically including Mr. Dolan) into the eight-figure  
 14 settlement fund established by the Plan, for distribution to claimants by a specially  
 15 appointed claims administrator, and (b) “permanently stayed, restrained and  
 16 enjoined” any party from “taking any action,” including “commencing or continuing,  
 17 in any manner, whether directly or indirectly, any suit, actions or proceedings of any

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21       <sup>6</sup> Although Mr. Dolan was identified as a “Released Party” by virtue of his  
 22 status as a “Former Representative” of TWC, the Plan released *all* “Sexual  
 23 Misconduct Claims” against Mr. Dolan, regardless of whether those claims stem from  
 24 alleged actions taken in his capacity as a TWC director. The fact that Plaintiff’s  
 25 allegations concern conduct predating Mr. Dolan’s service as a TWC director is also  
 26 irrelevant. The terms of the Channeling Injunction are unequivocal: So long as a  
 27 claim concerns “the alleged or actual sexual misconduct of Harvey Weinstein,”  
 Plaintiff may not commence “any suit, action[] or proceeding[] of any kind” against  
 Mr. Dolan, no matter when or whether the underlying alleged misconduct occurred.  
 Ex. A, D.I. 3203-1 at \*8.

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1 kind” against a “Released Party” (including Mr. Dolan) with respect to any Sexual  
 2 Misconduct Claim.<sup>7</sup>

3       The Channeling Injunction is an order entered by a federal court that expressly  
 4 prohibits claimants from asserting against, *inter alia*, Mr. Dolan any claims that relate  
 5 to alleged sexual misconduct of Harvey Weinstein. Plaintiff’s aiding and abetting  
 6 claim most assuredly arises directly from alleged sexual misconduct of Weinstein.  
 7 The FAC could not be more explicit on the point, as it avers—albeit in a conclusory  
 8 and legally insufficient manner—that Mr. Dolan somehow orchestrated Plaintiff’s  
 9 alleged chance meeting with Weinstein, which Plaintiff claims resulted in her assault  
 10 by Weinstein. By asserting that Mr. Dolan facilitated Weinstein’s alleged sexual  
 11 assault of Plaintiff, Plaintiff and her counsel consciously violated a federal court  
 12 order.<sup>8</sup> While there are, as discussed above, ample other grounds on which the aiding  
 13 and abetting claim is subject to dismissal at the pleadings stage, the Release and  
 14 Injunctive components of the Plan provide an independent, compelling basis that  
 15 mandates dismissal of that claim.<sup>9</sup>

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17       <sup>7</sup> Under the Plan, existing and putative claimants had the right to elect not to release Mr. Weinstein—but not any “Released Party” such as Mr. Dolan—if they so chose. Ex. A, D.I. 3203-1 at \*8.

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19       <sup>8</sup> A bankruptcy court’s authority to release claims against third parties without the claimants’ consent is on appeal in an unrelated case. *Harrington v. Purdue Pharma L.P.*, 144 S. Ct. 44 (2023). However, unless and until the Bankruptcy Court’s Channeling Injunction is dissolved by a binding judicial directive, that injunction remains enforceable, and Plaintiff cannot ignore it. *United States v. United Mine Workers of Am.*, 330 U.S. 258, 293 (1947) (“an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings”).

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21       <sup>9</sup> As a result of Plaintiff’s decision to paint all of her claims with the broadest possible “Weinstein brush,” this entire action asserts claims that relate to Weinstein’s alleged sexual misconduct. Although the Dolan Defendants do not at this juncture

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1 **IV. CONCLUSION**

2 For each of the foregoing reasons, the Dolan Defendants respectfully request  
3 that the Court dismiss Plaintiff's FAC and all claims asserted therein against them,  
4 with prejudice.

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21 seek dismissal of the entire action on these grounds, the Dolan Defendants reserve the  
22 right, in the event this action is not dismissed against them in its entirety, to argue at  
23 summary judgment and/or trial that all asserted claims are barred by the Injunction  
24 and Release.

25 Moreover, although potentially premature at this time, the Dolan Defendants  
26 reserve the right to move to sever Weinstein pursuant to Fed. R. Civ. P. 21 and to  
27 strike all allegations concerning Weinstein pursuant to Fed. R. Civ. P. 12(f) following  
28 the Court's ruling on the instant Motion to Dismiss.

1 DATED: April 24, 2024

Respectfully submitted,

2 PERRY LAW

3 By: /s/ E. Danya Perry

4 E. Danya Perry

5 Karen Agnifilo

6 Joshua Stanton

7 Attorneys for Defendants James Dolan and JD  
& The Straight Shot, LLC

8 By: /s/ John J. Rosenberg

9 John J. Rosenberg

10 ROSENBERG, GIGER & PERALA, P.C.

11 Attorneys for Defendants James Dolan and JD  
& The Straight Shot, LLC

12 By: /s/ Robert E. Dugdale

13 Robert E. Dugdale

14 Michael J. McCarthy

15 KENDALL BRILL & KELLY

16 Attorneys for Defendants James Dolan and JD  
& The Straight Shot, LLC

17

18 **ATTESTATION**

19 I, Robert E. Dugdale, attest that all other signatories listed, and on whose  
20 behalf the filing is submitted, concur in the filing's content and have authorized the  
21 filing.

22 By: /s/ Robert E. Dugdale

23 Robert E. Dugdale

## **CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for the Dolan Defendants, certifies that this brief contains 6,620 words, which complies with the word limit of Local Rule 11-6.1.

DATED: April 24, 2024

By:

/s/ Robert E. Dugdale

Robert E. Dugdale